

PROCEEDINGS BEFORE PUBLIC LAW BOARD NO. 3781

AWARD NO. 201

Case No. 201

Referee Fred Blackwell

Carrier Member: J. C. Amidon

Labor Member: D. D. Bartholomay

PARTIES TO DISPUTE:

BROTHERHOOD OF MAINTENANCE OF WAY EMPLOYEES

vs.

CONSOLIDATED RAIL CORPORATION

STATEMENT OF CLAIM:

Claim of the Brotherhood (MW-3272) that:

1. The Agreement was violated when the Carrier assigned outside forces (Leon Riley Excavating Company) to install a 48" culvert pipe, install rip-rap material, spread straw and smooth the right of way at Mile Post 253 on the Buffalo-Chicago Main Line on November 29 and December 2 and 6, 1993.
2. The Agreement was further violated when the Carrier failed to furnish the General Chairman with advance written notice of its intention to contract out the work described in Part (1) above, as required by the Scope Rule.
3. As a consequence of the violations referred to in Parts (1) and/or (2) above, B&B Mechanics G. Tafelski, K. Baker and G. Myers shall each be allowed twenty (20) hours' pay at their respective straight time rates and one (1) hour pay at their respective time and one-half rates.

FINDINGS:

Upon the whole record and all the evidence, after hearing in the Carrier's Office, Philadelphia, Pennsylvania, the Board finds that the parties herein are Carrier and Employees within the meaning of the Railway Labor Act, as amended, and that this Board is duly constituted by agreement and has jurisdiction of the parties and of the subject matter.

FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000

DECISION:

Claim Denied.

OPINION

This dispute arises from a timely filed claim on behalf of B&B Mechanics G. Tafelski, K. Baker, and G. Myers, on the basis of allegations that the Carrier violated the Scope Rule of the 1982 Agreement by contracting Scope covered work to outside contractor Leon Riley Excavating Company, and by failing to give the General Chairman advance notice of said contracting, as required by paragraph 2 of the Scope Rule. The work in dispute is culvert work at Mile Post 253, Buffalo-Chicago Main Line performed in November and December 1993.

The Scope Rule of the 1982 Agreement, in pertinent part reads as follows:

"SCOPE

These rules shall be the agreement between Consolidated Rail Corporation (excluding Altoona shops) and its employees of the classifications herein set forth represented by the Brotherhood of Maintenance of Way Employees, engaged in work generally recognized as Maintenance of Way work, such as, inspection, construction, repair and maintenance of water facilities, bridges, culverts, buildings and other structures, tracks, fences and roadbed, and work which, as of the effective date of this Agreement, was being performed by these employees, and shall govern the rates of pay, rules and working conditions of such employees.

In the event the Company plans to contract out work within the scope of this Agreement, except in emergencies, the Company shall notify the General Chairman involved, in writing, as far in advance of the date of the contracting transaction as is practicable and in any event not less than (15) days prior thereto."

* * * * *

From full review of the whole record,¹ the Board finds that the claim is not supported by the requisite record evidence and accordingly, the claim will be denied for want of proof.

The Organization's procedural argument that the Carrier did not give advance notice of the contracting out, is rebutted by Carrier letter to the General Chairman, dated October 4, 1993, about work that was performed in November and December 1993. This letter, in pertinent part, states (CE 1):

"This is to advise that we intend to contract for the installation of 48" corrugated metal pipe culverts under the Chicago Line at Mile Post 252.47 located on the Toledo Seniority District of the Dearborn Division."

The Organization's position concerning the culvert work in dispute, is that said work should have been assigned to the Carrier's B&B forces, because this is the kind of work that the B&B forces have historically performed.

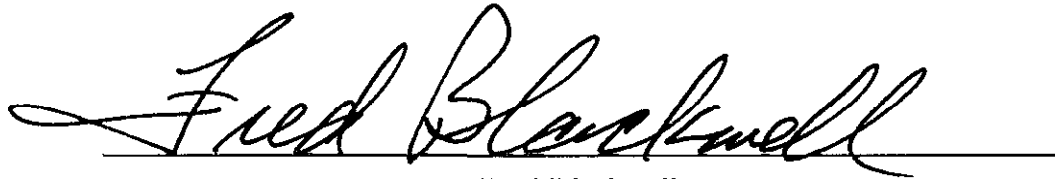
The Carrier asserts that the work in dispute required the positioning of a 54 inch steel casing pipe and then inserting therein a 48 inch corrugated metal pipe, using the jack and bore method; and that the Carrier did not have the boring machine with hydraulic jacks needed to perform the boring required to install the steel casing pipe, nor did its B&B Employees have the necessary skills to perform the actual boring installa-

¹ All prior authorities submitted for the record have been considered and analyzed in arriving at this decision.

tions of the casing pipe.

The Board concludes from reviewing the foregoing and the record as a whole, that the Carrier's B&B forces have performed culvert installation on the Carrier's right of way, but they have never performed culvert installations that entailed the use of the jack and bore method under existing trackage. The Board also notes that the Conrail forces performed the work of installing and removing two (2) sets of temporary track supports.

In view of the foregoing, and based on the record as a whole, there is no basis on which the claim could be sustained and accordingly the claim will be denied for lack of record support.

A handwritten signature in cursive script, reading "Fred Blackwell", written over a horizontal line.

Fred Blackwell
Chairman / Neutral Member
Public Law Board No. 3781

May 30, 1998

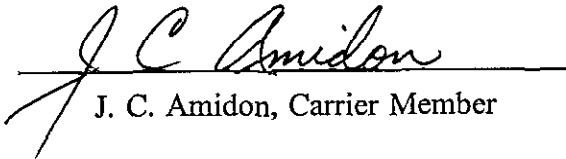
AWARD

The preponderating evidence of record does not establish that the Carrier violated the Agreement by improperly contracting out culvert work at Mile Post 253 on the Buffalo-Chicago Main Line in November and December 1993. Accordingly, the claim is hereby denied for lack of record support.

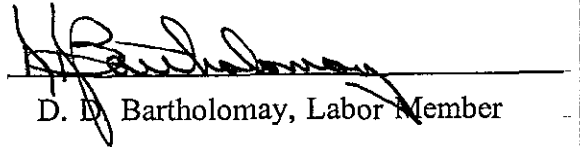
BY ORDER OF PUBLIC LAW BOARD NO. 3781.



Fred Blackwell, Neutral Member



J. C. Amidon, Carrier Member



D. D. Bartholomay, Labor Member

Executed on June 19TH, 1998

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FRED BLACKWELL
ATTORNEY AT LAW

19129 ROMAN WAY
GAITHERSBURG,
MARYLAND 20879
(301) 977-5000